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Supreme Court, U.S.
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No. 00-1835

IN THE

Supreme Court of the United States

ADOUDA ADJIRI,
Petitioner,

v.

EMORY UNIVERSITY,
Respondent.

On Petition For A Writ Of Certiorari
To The United States Court Of Appeals
For The Eleventh Circuit

REPLY TO BRIEF IN OPPOSITION

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ARGUMENT

I. Respondent's Claim Of Failure To Establish Pretext Is Groundless.

If this case were to last hundred years and if for each year petitioner had presented hundred different evidences and if respondent had confessed its wrongdoing hundred different times, the District Court would still have dismissed this case hundred times, and the Appeal Court would still have affirmed hundred times, the District Court's decision granting respondent's summary judgement motion.

That would not be because it is difficult to pass summary judgement but because it is impossible to pass summary judgement in a situation where dismissal is highly desired. Thus, thousands of evidences and hundred confessions would never be convincing enough because once dismissal is wanted in a an employment discrimination case, summary judgement is the way to go and summary judgement makes it happen no matter what.

The District Court censored respondent's confession and did not consider petitioner's answers filed in opposition to summary judgement. These factors combined with the District Court's failure to compel respondent to answer petitioner's questionnaire, made it easy for the court to reach the conclusion recommending the granting of respondent's motion for summary judgement.

The Appeal Court affirmed the District Court's decision resuming the same argument. Knowing the confession of respondent, this led to raise the first question of the petition to the Supreme Court.

When petitioner showed the *prima facie* of her case,

the Appeal Court still denied her petition for panel rehearing but without stating the reason (s) for such action. Had there been any further reproach against petitioner, the Appeal Court would have stated it in the order of March 8, 2001.

As filed in her petition to the Appeal Court, petitioner met all the conditions for her claims and are summarized bellow:

1. Petitioner Exhausted Her Race And National Origin Claims:

Title VII of the Civil Rights Act of 1964 prohibits an employer from "discriminating against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin" 42 U.S.C. § 2000e(a)(1).

Adjiri is white and a citizen of Algeria. Adjiri belongs to a protected class. Adjiri entered legally the United States and was officially employed by Emory University. Title VII prohibits discrimination because of someone's race and national origin and Title VII does not specify race discrimination as only whites discriminating against blacks. Adjiri is legally protected because of her membership of a protected class.

Black female staff at Emory handled Adjiri's internal complaints: Mrs. Lelia Crawford, Dean of the International Office at Emory, Mrs. Ozella Johnson of the Employment Relations Office (ERO), and Mrs. Paulette Dilworth of the Equal Employment Opportunity Office (EEO).

Mrs. Crawford who previously led Adjiri to the ERO and EEO offices and told Adjiri about her rights to complain, made the following discriminatory statements in September 1996: "these things happen in your country" and then added: "in your country you

can't even complain".

Mrs. Johnson played with Adjiri's innocence and instead of handling herself Adjiri's complaint, she directed Adjiri to send her complaint to Mrs. Peggy Rogers, who was then unknown to Adjiri. Mrs. Rogers is a Work Compensation Specialist but not an Employment-Relations Specialist. No action was taken to improve her work conditions as Adjiri requested in her complaint to the ERO.

Mrs. Dilworth was aggressive when she met with Adjiri for the first time and refused to shake Adjiri's hand when Adjiri greeted her. Consequently, Dilworth too took no action and when Adjiri appealed, the decision of May 23, 1996, Dilworth never responded (App. Ex. 12 and 15). Adjiri's work environment grew more hostile as Adjiri was assaulted on the job on July 10, 1996 then discharged on July 22, 1996 (In Adjiri's response to Defendant's interrogatories).

After the last meeting with Mrs. Crawford in September 1996, Adjiri went to file a report with the Emory Police Department. The later refused to document Adjiri's complaint about race and national origin discrimination and got rid of Adjiri by sending her to the Human Resources Department at Emory. Adjiri had no help from the Human Resources (In Adjiri's response to defendant's interrogatories).

When no one stepped in to stop Emory from further abusing Adjiri, Emory went even farther, exercised its power and used the local Immigration and Naturalization Service (INS). The INS then targeted Adjiri, seized her passport along with the document (Form I-94) that shows Adjiri's legal entry to the United States. The INS took Adjiri's fingerprints and records of her possessions.

Adjiri went back to the EEOC and filed her second complaint (App. Ex. 33). This time, Adjiri did not leave the EEOC office until Mrs. Patricia Quashie of the

EEOC wrote down Adjiri's race and national origin claims and assigned a case number to Adjiri's complaint. In the first EEOC complaint (App. Ex. 25), Mrs. Judith Lightsey of the EEOC did not assign a case number and refused to document Adjiri's race and national origin claims. Only few days later and after Adjiri's request, a case number was assigned to her first EEOC complaint. In both cases, the EEOC failed to take action.

2. Sexually Hostile Work Environment Claim:

Petitioner also met all the conditions for her claim of a sexually hostile work environment.

a) Adjiri is a female and belongs to a protected class. Adjiri did not solicit nor invite the harassment and regarded the conduct undesirable and offensive. *See Caleshu*, 737 F. Supp. at 1081. Adjiri did not welcome the harassment and made contemporaneous complaints about it. The misconduct complained about, actually occurred and was documented.

b) The harassment was pervasive and regular: Zhao's insults started the third week of January 1996. In February 1996, Mr. Roland Philips and Mr. James Davis of the VA RSO assisted Adjiri in the radiation safety matters. After this, Zhao became more aggressive and insulting and again prevented Adjiri from using the printer in the lab. *See Hall v. Gus Constr. Co., Inc.*, 842 F. 2d at 1014. Adjiri's cry for help led to a meeting, with the VA Research Administrator Mr. Tony Laracuante, in June 1996. No action was taken and the harassment continued as on July 10, 1996, Adjiri was assaulted on the job. The harassment affected Adjiri's work-performance and altered Adjiri's conditions of employment as it created an abusive working

environment. *See Erebia v. Chrysler Plastics Prods. Corp.*, 772 F2d 1250 1256 (6th Cir. 1985). The degree of severity rose to a level that would affect any reasonable female confined to those hostile conditions. *See Harris v. Forklift Systems, Inc.*, 510 U.S. 17, 21; 114 S Ct 367; 126 L Ed 2d 295 (1993) and 29 C.F.R. § 1604. 11 (a) (1996).

c) The harassment was based on Adjiri's gender female. Austin witnessed Zhao's insults to Adjiri, tolerated the conduct and did nothing to stop it. Adjiri did not submit to Austin's implicit sexual advances when Austin created an environment favorable for sexual activity in his hotel suite. Adjiri did not permit Austin to touch her, each time Austin came too close. Austin has authority to hire or discharge that is delegated to him by the employer Emory University. Zhao has no authority to hire or discharge. Adjiri was discharged in July 1996. In *Schroder v. Schock*, 42 FEP cases 1112 (D. Kans. 1986) the court held an employer liable for *quid pro quo* harassment by supervisor who had authority to recommend plaintiff's discharge.

d) Emory University knew about the harassment and did nothing to stop it but tolerated the conditions. Emory University never claimed having taken any corrective measure to protect Adjiri from the harassment she complained about. Adjiri suffered intentional discrimination because of her sex female in violation of Title VII. *See Faragher v. Boca Raton*, 534 U.S. 775; 118S Ct 2275; 141 L Ed 2d 662 (1998).

3. Sex Discrimination Claim:

Sexual harassment is a form of sex discrimination prohibited by Title VII as amended in 1980. Adjiri met the requirements for her claim of sex discrimination.

a) Adjiri is a female and a member of a protected class. As a member of a protected class, Adjiri is legally protected from discrimination based on her gender.

b) Adjiri was qualified for the position she held for two years in the Biology Department. Adjiri was qualified for the position she occupied in the Pathology Department from January 1996 until the wrongful discharge of July 22, 1996. Adjiri's scientific abilities were far from any critics that Emory University never questioned. The grounds of the discharge of July 22, 1996 never stated Adjiri's scientific inability to perform the job for which she was hired.

c) Despite her qualification for the position, an adverse employment decision was made against Adjiri as she was terminated from her employment in July 1996.

d) The decision made by Emory University in July 1996 raises an inference of discrimination based on Adjiri's membership in the protected class. *See Chambers v. TRM Copy Centers Corp.*, 43 F. 3d 29, 37 (2d Cir. 1994).

4. Retaliation Claim:

Adjiri also met all the conditions for her claim of retaliation.

a) Adjiri suffered from harassment in her work place in violation of Title VII and complained about it. When she complained about her boss and co-worker, Adjiri was engaged in a protected activity known to the employer Emory University (See 29 C.F.R Labor). Adjiri also engaged in a protected activity when she complained about her co-worker who was not following radiation safety rules. Adjiri's complaint about Zhao is

an activity protected also by Title II of the 1972 Energy Reorganization Act, and known to the employer Emory University.

b) The employer Emory University subjected Adjiri to an adverse decision. Neither the ERO nor the EEO at Emory ever took any corrective action to stop harassment Adjiri complained about. In her despair, Adjiri attempted to complain to the Business Manager of the Pathology Department at Emory, Mrs. Carol McMurtray. Adjiri took an appointment with Mrs. McMurtray for the 22 of July 1996 (App. Ex. 18). But Mrs. McMurtray had prepared the first Separation Notice and surprised Adjiri with the termination of her employment that day of July 22, 1996 (App. Ex. 19) and (29 C.F.R. Labor).

c) There was a very clear link between the protected activity Adjiri was engaged in and the adverse employment decision taken by Emory University against her, which terminated Adjiri's employment on July 22, 1996. *See Canitia v. Yellow Freight System, Inc.*, 903 F.2d 1064, 1066 (6th Cir. 1990).

The following conclusions are evident:

a) Respondent indeed violated Title VII and the allegation of failure to exhaust her race and national origin claims as well as failure to make *prima facie* showing of hostile work environment sexual harassment, sex discrimination, or retaliation are erroneous as a matter of fact. **b)** Because petitioner successfully made the *prima facie* showing of her case, the Appeal Court failed to list any argument when it denied her petition for panel rehearing. **c)** For the reasons set forth in the petition and the above arguments, respondent's claim of failure to establish pretext is groundless.

II. Respondent Erroneously Claims This Case Holds No Importance Beyond The Parties.

It is an error for respondent to think that this case has no implication on other cases of employment discrimination. Title VII was born since 1964 and almost four decades later, employers throughout the country are still practicing discrimination on a daily basis, at different levels and in different ways. Many such employers were forced by court orders to stop their discriminatory practices such as Texaco. But many other employers who have not received similar orders from the court are continuing to abuse their employees.

Taking into account the difference between class-action lawsuits and the individually filed cases, many individual claims are dismissed using summary judgement. Those employers, who benefited from summary judgement advantage, go back to their old discriminatory practices after having collected insurance money to recover their legal expenses, which encourages them to do it all over and again. And thus discrimination in workplaces never ends.

III. Petitioner's Questions Have Not Been Raised Before.

It is a custom but not an exclusivity[1] for the Supreme Court to be called upon to resolve conflicts between courts.

Adjiri's petition happened to raise new questions, which have not been addressed before. Therefore,

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[1] The Supreme Court decided in the last presidential elections while there were no precedent similar cases and no prior conflicts between courts as, the case of the candidate then George W. Bush raised new questions.

in this situation, a prior conflict between courts cannot possibly exist.

The questions that petitioner brought to the attention of the Supreme Court can only be brought by the very victim who felt the pain of discrimination in the bottom of her soul. Adjiri's petition may be unprecedented because as an unlucky victim of employment discrimination, she was lucky enough to survive pain, anguish and much more, for six long years in a row, before her voice could reach the Supreme Court.

Respondent's claim of lack of conflict between courts is inapplicable and consequently without merit.

IV. Respondent's Claim That Certiorari Is Not Warranted To Review Evidence Is Without Merit.

The Supreme Court has the jurisdiction to act in this case and the Supreme Court will use the means in its power, which are judged by the Supreme Court necessary to serve its duty.

Petitioner's writ is not based on hope but on documented evidence that the District Court censured and the Appeal Court agreed on (Refer to App. D attached to the writ).

Respondent's claim that Certiorari is not warranted to review evidence is therefore without merit.

V. Respondent's Desperate Claim That It Did Not Actually Confess Under Oath Is Poor And Without Merit.

In October 1996, respondent confessed under oath being at fault in the discharge of petitioner because that was the unique and mere truth behind the action of July 22, 1996.

Respondent did not expect petitioner to survive and take her case to court. When in November 1996, peti-

tioner, acting *pro se,* filed her claim under Title VII, respondent had to act and used the local INS with the hope to deport petitioner. When this evil tactic has not yet worked as planned, respondent desperately attempted to translate the confession it made under oath, into a simple matter of "specifically declined to challenge her appeal of the preliminary determination".

Most importantly, neither the District Court nor the Appeal court ever questioned the confession of October 1996. And neither the District Court nor the Appeal court ever questioned the legality of the document filed by the Georgia Department of Labor in which it recorded the confession made in October 1996 (Pet. App. D). However, both courts once agreed on censuring such evidence, rather challenged petitioner accusing her of failure to make *prima facie* showing of her case when the District Court granted respondent's motion for summary judgement which was later supported by the Appeal Court.

Respondent's claim that it did not actually confess under oath is desperate, poor and therefore without merit.

Conclusion

For the reasons set forth in the petition and for the arguments stated in this reply brief, Adjiri respectfully requests that her Petition for a Writ of Certiorari be granted.

Respectfully submitted,

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